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# Ontario Labour Relations Board HIGHLIGHTS

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## SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in September of this year. These decisions will appear in the September/October issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute www.canlii.org.

**Practice and Procedure – Unfair Labour Practice** – The Board, having found the employer dismissed S in violation of the Act, reinstated him in the context of an interim order – Subsequently the employer suspended S without pay for reasons unrelated to the organizing campaign, and sought the Board's permission to discharge him – The Board held that the interim reinstatement order was spent; S was no longer employed on an interim basis but was a regular employee with all the rights, obligations and protections of the Act – Nothing in the Act requires the employer to seek the Board's permission to terminate an employee; the union is free to make any application it wishes if the employer decides to terminate S – Outstanding (unrelated) unfair labour practice allegations remain to be heard – No order from the Board

**COTTON INC.;** RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837; OLRB File No. 3254-13-U; Dated September 24, 2015; Panel: Brian McLean (2 pages)

**Employment Standards – Reprisal** – E was reinstated to employment as part of a settlement of an earlier Employment Standards application – E mistakenly believed his lines of communication with the employer were restricted by the terms of the earlier settlement – He attempted to contact an employer representative to request emergency leave; that person was on an extended leave of her own – When E ultimately reached representatives of the employer to report his absence, his intentions were unclear: the employer not unreasonably inferred that E had left the workplace without notice or explanation, and had at no time indicated or implied that he was exercising a right under the Act – The Board held that there are no magic words that an employee must use to engage the protections of the ESA; but if the employee's mistrust of his employer prevents him from communicating with the employer to allow it to understand he is exercising rights under the Act, and the employee's conduct is inconsistent with exercising such a right and leads to his termination, that termination cannot constitute a reprisal – Application dismissed

**CSDC SYSTEMS INC.;** RE: PHILIPPE EVELEIGH; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB File No. 1189-14-ES; Dated September 15, 2015; Panel: Eli A. Gedalof (11 pages)

**Parties – Unfair Labour Practice** – Unifor sought to amend its original unfair labour practice complaint to include the two owners of the company personally – The Board held that the two

individuals were not only the directing minds of the employer, but that the actions of the employer were grounded in the individuals' "personal beliefs" – Motion to add G and S in their personal capacity granted; liability and remedy to be determined at the hearing – Matter continues

**GINGRICH WOODCRAFT INC.:** RE: UNIFOR; RE: LEON GINGRICH; RE: LARRY STEINER; OLRB File No: 1366-15-U & 1367-15-U; Dated September 11, 2015; Panel: Bernard Fishbein (6 pages)

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**Related Employer – Sale of Business** – Local 787 sought a declaration from the Board that the sale by Clough of the residential portion of its business to Sandwell was caught by s. 69 of the Act, as well as a finding that Sandwell and Bosanac were related employers pursuant to section 1(4) – When Sandwell learned of its obligations to the union, it successfully applied to the Ontario Superior Court of Justice to have the Agreement of Purchase and Sale rescinded – Sandwell argued the APS was void *ab initio*, thus absolving it of any commitments to Local 787 – In determining how to treat the rescinded agreement, the Board found that the issue should be considered from a labour relations perspective and the statutory language of s.69, rather than from the viewpoint of the common law or principles of equitable remedies from a court: the legislative purpose behind s.69 is to protect a union's collective bargaining rights when a sale takes place – The Board found that the Union's work opportunities were transferred by the sale; Sandwell benefitted financially from the transfer of some of Clough's customers and goodwill to it – A union's bargaining rights are protected as though they are "vested" and survive the impact of the act of rescission – Application granted; declaration made

**JOHN CLOUGH & SON LIMITED;** RE: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 787; RE: BOSANAC HEATING & ELECTRIC LIMITED; RE: SANDWELL FUELS LIMITED; OLRB File No. 3306-12-R; Dated September 18, 2015; Panel: Maurice A. Green (21 pages)

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**Employment Standards** – The ESO ordered Kognitive to comply with the vacation pay provisions of the ESA – The issue before the Board was whether field market representatives were entitled to such payment – The employer argued the FMRs are commissioned salespersons and exempt from the vacation pay provisions – The Board examined the practice and context of the FMRs' work (assigned to specific locations to market client products; in this case, individual Canadian Tire stores to market Canadian Tire credit cards, with a prepared script and close monitoring of performance) and found that an assignment to one location can constitute a "route" for purposes of the Act – Compliance order affirmed

**KOGNITIVE MARKETING INC.:** RE: SINGER INVESTMENTS LIMITED; RE: SHAPIRO INVESTMENTS INC.; RE: TOSKAN INVESTMENTS LIMITED OPERATING AS KOGNITIVE MARKETING; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB File No: 0621-14-ES; Dated September 25, 2015; Panel: Roslyn McGilvery (13 pages)

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## COURT PROCEEDINGS

**Judicial Review – Representation Vote** – At a Case Management Hearing BACU requested an oral hearing to address the eligibility of four employees who had cast ballots in a vote – The Board ruled an oral hearing unnecessary and dealt with the issue based on the parties' written submissions – BACU sought reconsideration and also brought an unfair labour practice complaint – The Board gave three reasons for dismissing the reconsideration request: first, an earlier decision of the Board had already determined the eligibility of voters and found BACU's conspiracy allegations vague and lacking, and no reconsideration of that ruling had been requested; second, even if the Board were to consider the challenges, they were without merit; and finally, the Board noted that while there were conflicting versions about what happened at the vote, it need not resolve the conflict for purposes of the decision – The Board however did proceed to make credibility findings against BACU – The court found that the credibility findings were not central to the Vice-Chair's decision as they were unnecessary to determine the issue – The standard of review was reasonableness and the court found no basis whatsoever to interfere with the Board's determination – Judicial review dismissed.

**BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 2;** RE: ONTARIO LABOUR RELATIONS BOARD; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: BMC MASONRY, A DIVISION OF 2032686 ONTARIO LIMITED; Divisional Court File No. 459/14; Dated September 18, 2015; Panel: Molloy, Sanderson and Sachs, JJ. (4 pages)

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The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

## Pending Court Proceedings

| Case name & Court File No. | Board File No. | Status |
|---|---|---|
| **Labourers' International Union of North America, Local 1059** ***(McKay-Cocker)*** Divisional Court No. 384/15 | 0883-14-R | Pending |
| **Universal Workers Union, Labourers' International Union of North America, Local 183** ***(Maystar)*** Divisional Court No. 368-15 | 1938-12-R | Pending |
| **LBM Construction Specialties Inc.** Divisional Court No. 353/15 | 0121-14-R | Pending |
| **Royal Ottawa Health Care Group - Brockville Mental Health** Centre Divisional Court No. 15-2123 **(Ottawa)** | 2460-14-HS<br>2999-14-IO<br>3000-14-IO | October 29, 2015 |
| **EMT Contractor Division Inc** Divisional Court No. 32-15 **(London)** | 3514-13-R | Pending |
| **Carlene Bailey** Divisional Court No. 173/15 | 0480-13-U | Pending |
| **Valoggia Linguistique** Divisional Court No. 15-2096 **(Ottawa)** | 3205-13-ES | Pending |
| **Toran Carpentry Inc.** Divisional Court No. 49/15 | 0229-13-R | Pending |
| **Sentry Electrical (Canada) ULC** Divisional Court No. 041/15 | 0505-14-R | October 20, 2015 |
| **Charles Zubovits** Divisional Court No. 3/15 | 1368-04-U | September 29, 2015 Dismissed, Reasons to Follow |
| **Royal Ottawa Hospital** Divisional Court No. 14-62782 **(Ottawa)** | 2461-14-IO | Pending |
| **BACU (BMC Masonry)** Divisional Court No. 459/14 | 3236-13-R<br>0451-14-U | September 17, 2015 Dismissed |
| **Dean Warren** Divisional Court No. 345/14 | 2336-13-U | September 22, 2015 Heard, Reserved |
| **Donald A. Williams** Divisional Court No. 327/14 | 1129-13-U | November 10, 2015 |
| **PCL Constructors Canada Inc.** Divisional Court No. 240/14 | 3414-11-G | November 26, 2015 |
| **Godfred Kwaku Hiamey** Divisional Court No. 345/13; 346/13 | 2906-10-U<br>3568-10-U | August 13, 2015 Dismissed, Seeking leave to CA |